

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELIJAH JORDAN SWEITZER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAWNA SWEITZER,

Respondent-Appellant.

UNPUBLISHED

May 9, 2006

No. 263979

St. Joseph Circuit Court

Family Division

LC No. 03-000340-NA

Before: White, P.J., and Fitzgerald and Talbot, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

The trial court did not reversibly err in applying an erroneous standard of proof when determining whether termination was clearly not in Elijah's best interests. Respondent contends the trial court erroneously shifted the burden to her to demonstrate that termination was clearly not in his best interests, warranting reversal and a new hearing. While the trial court misstated the applicable standard, the record indicates that the trial court did not misapply the standard.

The Michigan Supreme Court, directly addressed the issue of the best interests burden of proof in *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000), rejecting the notion that either party bears the burden of producing best interest evidence opposing termination. *Id.* at 353-354. Rather, the trial court is expected to base its best interests decision on the entire record, so that even where no best interest evidence is offered, the trial court may find from evidence on the whole record that termination is clearly not in a child's best interests. *Id.* at 353.

The record reveals that, after discussion by the parties, the trial court proceeded to allow both parties to present best interests evidence and balanced all of the evidence in making its decision. Because the trial court properly based its best interests finding on the entire record, and the record supports its finding, the trial court's misstatement of the applicable standard was harmless error.

The evidence did not show that termination of respondent's parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Statutory grounds had previously been established in support of termination of respondent's parental rights to Elijah. The only remaining issue was whether termination of respondent's parental rights would adversely affect Elijah. Although evidence showed that respondent had appropriately parented her newborn child, Micah, for four months, no evidence was presented showing that termination was clearly contrary to Elijah's best interests. Rather, the evidence showed that he needed to develop a normal attachment to one set of parents who would address his developmental delays, and that respondent had not yet demonstrated a long-term commitment to appropriate parenting.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot